Tucker, 3 Hun 529. It has been held under similar ordinances that the duty to erect and maintain a walk is a public one, and no action will lie against an adjacent owner by a person injured by the defects. His right of action is against the municipality. *Moore* v. *Gadsden,* 93 N. Y. 12; *Heeney* v. *Sprague,* 11 R. I. 456; *Keokuk* v. *District of Keokuk,* 53 Ia. 352; *Philadelphia & Reading Ry. Co.* v. *Ervin,* 89 Pa. St. 71, 33 Am. Rep. 726. There is no liability on the owner arising from the mere fact of ownership. And when the city has negligently allowed a defect in a sidewalk to remain, it has no action over against the adjacent owner for damages it has been compelled to pay. 4 DILLON MUN. CORP., Ed. 5, § 1729; *Jansen* v. *Atchison,* 16 Kan. 358. It has also been held that when there is a statutory provision that the municipality shall repair the sidewalks upon failure of the lot owner to do so on service of notice upon him, and charge the costs to the lot owner, this removes his liability for damages caused by the defect and imposes upon him only a statutory liability for the cost of repairs. The municipality cannot maintain an action against a lot owner for indemnity for damages it had to pay for injury due to the defects. 2 SMITH, MUN. CORP., § 1305; *City of Rochester* v. *Campbell,* 123 N. Y. 405, 25 N. E. 937, 10 L. R. A. 393, 20 Am. St. Rep. 760; *Hartford* v. *Talcott,* 48 Conn. 525; *New Castle* v *Kurtz,* 210 Pa. St. 183, 69 L. R. A. 488, 59 Atl. 989, 105 Am. St. Rep. 798. It is worthy of notice that the Pennsylvania Supreme Court, in arriving at the decision in the principal case, apparently decline to follow their own statement of the law as laid down in *New Castle* v. *Kurtz, supra,* and seem unwilling longer to give effect to the fact that the ordinance imposes upon the municipality as well as upon the property owner the duty to keep the walk in repair. No active or wilful negligence on the part of defendant was claimed.

MUNICIPAL CORPORATIONS—SINKING FUNDS—COMPLIANCE WITH CHARTER REQUIREMENTS.—The city of Muskegon, by a charter amendment, was authorized to borrow not to exceed $75,000 and to issue its bonds therefor to erect a municipal lighting plant, "provided, that * * * there shall be created a sinking fund for the purpose of paying the principal of the bonded debt, * * * and from the revenue received from the users of such lights a certain fixed amount, to be determined by the council, shall be paid into such sinking fund. * * * And there shall also be paid into such sinking fund, annually, from the contingent fund of said city, a certain amount to be determined by the council." In pursuance of this authority, the city passed a resolution ordering such a bond issue, redeemable in from 16 to 20 years, establishing a sinking fund, and ordering further "that from the revenue received from the users of such lights and from the contingent fund of said city there shall be paid into said sinking fund not less than $4,000 annually for each of eighteen years, and $3,000 the nineteenth year." Plaintiff, a local lighting company, sought to enjoin this issue on these grounds, among others: First, no "certain fixed sum" to be paid into said fund from the revenue of the plant is provided for as the charter requires; the resolution simply says "not less than $4,000 annually," etc., and the council may order as much more put into said fund as their uncontrolled desire may dictate. Second, conceding that

the minimum sum, $4,000, would be appropriated each year, this sum, together with compound interest (calculated at 4%) would at the end of the twenty years amount to $32,707.33 more than they are authorized to appropriate. *Held,* there is no reason to presume that the city, through its council, would tax itself for a larger amount than would suffice to retire the bond issue; and that no "certain amount" of revenue could be ascertained until after the plant was in operation, and therefore the resolution complied with the legislative intent in the charter. *Muskegon Traction & Lighting Co.* v. *City of Muskegon* (Mich. 1911) 132 N. W. 1060.

The court's reasoning in disposing of the two objections above noted is not entirely convincing. One of the primary objects of the law in providing for sinking funds is to lessen the burden of the tax-payers. *Kelly* v. *Minneapolis,* 63 Minn. 125, 30 L. R. A. 281. It is difficult to see how a provision laying aside $4,000 annually to retire an obligation which $2,823.17 annually would in twenty years pay off fulfills that object. The interest accumulating on sinking funds must not be ignored in dealing with such funds. *Elser* v. *City of Ft. Worth,* (Tex. Civ. App.) 27 S. W. 739, 742. It is proper to consider their earning capacity. *Sinking Fund Cases,* 99 U. S. 700, 725, 25 L. Ed. 496. The investment of such funds is contemplated in their creation, and becomes the duty of the custodian of the fund. *Commissioners* v. *Walker,* 6 How. (Miss.) 143, 38 Am. Dec. 433. To say that there is no presumption that the council under their resolution will ever appropriate more than $75,000 when the resolution itself has already appropriated at least that amount with compound interest would seem to be evading the issue presented. Further, a resolution appropriating an uncertain sum from two combined sources, as was done here, would hardly appear to be a compliance with a legislative provision requiring a certain sum from a single source. In order for a municipal enactment under an enabling act or a charter provision to be valid, it must be in compliance with such act. 2 DILLON, MUN. CORP., Ed. 5, §§ 1354, 1375. When bonds or securities are issued under an express power, the legislative act, being the only source of the authority, measures and limits the powers it confers, and such acts are strictly construed. *Taxpayers* v. *Tenn. Cent. Ry. Co.,* 79 Tenn. 329; *Norton* v. *Dyersburg,* 127 U. S. 160, 32 L. Ed. 85. Instead of meeting this objection squarely, the court say that there is no reason to suppose that the council will ever abuse the resolution as passed, and therefore it is within the spirit if not within the letter of the charter. Such a test is open to the same objection as the one raised to the first point. The question is not whether the council will abuse the resolution, but whether they have power to pass such a resolution. Another objection to this disposition of the issue grows out of the rights of future bond purchasers. They would have the right to have the resolution carried out according to its letter. A municipal law existing when a bond issue is made becomes a term of the contract between the municipality and the purchasers of the bonds. *Western Savings Fund Society* v. *Philadelphia,* 31 Pa. St. 175, 72 Am. Dec. 730; *City of Austin* v. *Cahill,* 99 Tex. 172, 88 S. W. 542. Any subsequent legislation varying the provisions of such law is within the constitutional inhibition against violating the obligation of contracts, U. S. Const., Art. I, § 10. *City of Austin* v. *Ca-*

hill, supra. 1 DILLON, MUN. CORP., Ed. 5, 194. Mandamus on the part of the bond-holder will lie to have the city carry out the terms of the law under which the fund was ordered to be set aside. *East St. Louis* v. *Amy,* 120 U. S. 600; *City of Austin* v. *Cahill, supra.* This is a right existing under contract and is independent of any equities that the bond-holder may have in the sinking fund. *City of Austin* v. *Cahill, supra.* Therefore, it is submitted, any purchasers of bonds under this issue might by mandamus compel the council to lay aside at least $4,000 every year, even after there is $75,000 in the fund. They would seem to have a contract right to the added security. This consideration scarcely seems consistent with the court's contention that there is no reason to presume that more than the charter limit will ever be appropriated to the sinking fund in question.

NEGLIGENCE—LAST CLEAR CHANCE DOCTRINE.—Plaintiff, a boy of 16, while chasing a baseball, ran across defendant's switch tracks, located near a ball park in a city and frequently crossed by the park's patrons. At the same time employees of defendant were backing a train at a rate of 6 to 10 miles an hour, without giving any warning of its approach or maintaining a lookout. Plaintiff failed to notice the train, and was compelled to grasp an iron rod on the car nearest him to save himself from being run down; he was dragged 170 feet and then fell and was injured. *Held* (LADD and WEAVER, JJ. dissenting), defendant was negligent in backing the car, but plaintiff was guilty of contributory negligence, and the defendant railroad was not liable under the last clear chance doctrine in not having a lookout on the train from the point of collision to the point of injury, because it had no actual knowledge of plaintiff's negligence. *Bourrett* v. *Chicago & N. W. Ry. Co. et al.* (Iowa 1911) 132 N. W. 973.

In unreservedly holding that actual knowledge of plaintiff's peril is essential to make a defendant liable under the "last clear chance" doctrine, the Iowa court has finally settled for itself a troublesome question, on which the state courts are not in accord. See 9 MICH. L. REV. 267; note, 55 L. R .A. 418. The decision clearly reverses the opinion of the court on a previous hearing of the same case, 121 N. W. 380. The majority opinion concludes that a different doctrine would result in making the defendant absolutely liable for its original negligence and in nullifying the doctrine of contributory negligence. See 9 MICH. L. REV. 167; 5 MICH. L. REV. 143; Note, 19 L. R. A. (N. S.) 446. The fundamental idea of the dissenting judges is that the question is basically not one depending on knowledge, but that the test is,—Has there been a breach of duty owing to the plaintiff, occurring after the contributory negligence of the plaintiff has ceased or culminated? See note, 7 L. R. A. (N. S.) 132; note 22 L. R. A. (N. S.) 200. The determination of the issue then depends on the facts and circumstances of the particular case. Whether plaintiff is a trespasser is often decisive of a railroad's breach of duty. See 1 MICH. L. REV. 233; note, 27 L. R. A. (N. S.) 379. For a concise statement of the modern English law on the subject see SALMOND, TORTS, (Ed. 2, 1910) p. 36.